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Place: Richmond, Virginia

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The claimant had filed a claim for unemployment compensation, effective November 4, 1990, giving Medic Computer Systems, Inc., of Mechanicsville, Virginia as his last employer, with dates of employment from September 24, 1990 through October 24, 1990. Commission records reflect that he was then certified for and was paid benefits in amount of \$72 per week for the 10 weeks ending January 12, 1991. Sometime later, it was discovered that although the claimant had worked over 30 calendar days, he had not actually performed services for Medic Computer Systems, Inc., on as many as 30 separate days. On December 13, 1991, a prior employer, Utote'm of Virginia, Inc., where the claimant had worked through July 7, 1990, reported that he had left work voluntarily. On January 20, 1992, a Deputy disqualified the claimant with respect to this separation, making that disqualification, effective November 4, 1990. His timely appeal resulted in an affirmation by an Appeals Examiner's decision, from which his timely appeal brought the matter before the Commission.

Section 60.2-619 of the Code of Virginia provides in part:

A.1. A representative designated by the Commission as a Deputy, shall promptly examine the claim. On the basis of the facts found by him, he Deputy shall either:

a. Determine whether or not such claim is valid and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and maximum duration thereof. . .

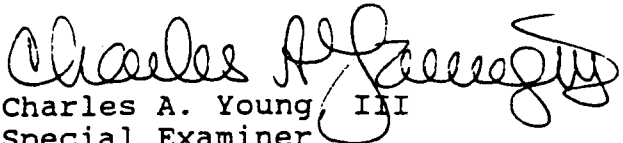
C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimants last know address. . . The Deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks (emphasis added).

Promptness is mandatory retirement under the Code. Although there is no specific time limit setting forth when a Deputy's determination is considered prompt (in the absence of a false statement or a deliberate withholding of facts where Section 60.2-618(4) allows action to be taken for up to 36 months), the retroactive application of a disqualification or ineligibility to a period of time for which benefits have already been paid is something which should be done as soon as possible after the facts to support such a determination are made known to the agency.

In the case of In re Ardizzone, Commission Decision 10619-C (August 2, 1978), it was held that an overpayment determination which was rendered some two years after the claim had been filed to be valid and was paid, violated the applicable promptness standard. In the case of Crone v. Kitchens Equipment Company, Commission Decision 18398-C (July 1, 1982), a delay of 13 months between the date a claimant was paid benefits and the date he was declared ineligible could not be considered prompt. In Randolph v. Huff-Cook M. B. A., Commission Decision 25734-C (July 11, 1986), a delay of seven months between the date a claimant began receiving benefits and the date she was disqualified was found too long to be considered a prompt determination.

The Commission must reach the same conclusion here. This claimant disclosed at the time he filed his claim for benefits in November, 1990, that he had worked for his last employer for exactly one month. Although this amounted to 30 calendar days, it is highly unusual for individuals to work seven days per week;

therefore, it could have been easily discovered at the time that the claimant had not actually performed services for this employer on 30 separate days. Instead, it was not until a year later that this matter was investigated, and the Deputy took two more months before issuing a determination which disqualified the claimant. Under the doctrine enunciated in the previously cited cases, this cannot be considered a prompt determination. Accordingly, it is hereby ORDERED that the Appeals Examiner's decision, together with the Deputy's determination upon which it is based, be vacated.


Charles A. Young, III
Special Examiner